IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 15544 of 2007(A)

PETITIONER:

P.MANIRAJAN, AGED 40
S/O.PRABHAKARAN, M.S.BHAVAN
K.T.KUNNU, CHERUVALAM, KALLARA,
NEDUMANGADU, THIRUVANANTHAPURAM

BY ADV. SRI.RENJITH B.MARAR
SRI.PRABHU VIJAYAKUMAR

RESPONDENTS:
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1. DEPUTY SUPERINTENDENT OF POLICE
PUNALOOR

2. CIRCLE INSPECTOR OF POLICE
KADAKKAL

3. SUB INSPECTOR OF POLICE
KADAKKAL POLICE STATION

4. THE SECRETARY
KADAKKAL PANCHAYAT

5. RAMACHANDRAN PILLAI
SOBHANA MANDHIRAM
VELLURELA, CHIKKELI,
KADAKKAL.P.O.

6. VIJAYAN PILLAI
KIZHAKKUMKAFRA VEEDU
VELLURELA, CHIKKELI,
KADAKKA.P.O.

7. USHA
RAJUBHAVAN, VELLURELA,
CHIKKELI, KADAKKAL.P.O.

8. KUNJUKRISHSNA PILLI
KUZHAKKUMKARAPUTHEN VEEDU
ANAPPARA, KADAKKAAL.P.O.

9. GOPALA PILLAI
KUZHAKKUMKARAPUTHEN VEEDU
VELLURELA, KADAKKAL.P.O.

10. ASSISTANT EXCISE COMMISSIONER,
KOLLAM.

*ADDL. 11. THE VELLOORELLA HUMAN RIGHTS PAURA SAMITHY,
VELLOORELLA, PALLIMUKKU, KADAKKAL VILLAGE,
REPRESENTED BY ITS CONVENOR, G. VIJAYA KUMAR.

12. PASTOR J.A. JOSE,
BELIVERS CHURSH, CHINGELI,
KADDKAL, KOLLAM DISTRICT.

*ADDL.RESPONDENTS 11 AND 12 ARE IMPLEADED VIDE ORDER ON I.A.7082/07 DATED 7.6.2007.

BY ADV. SRI.DEVAN RAMACHANDRAN
SMT.T.G.SEETHAL
SRI.PIRAPPANCODE V.S.SUDHIR
GOVT.PLEADER SRI.K.C.SANTOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO.15544 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF THE LICENCE OF THE PETITONER FOR TODDY SHOP NO.T.S.NO.22/07-08 ISSUED BY THE ASSISTANT EXCISE COMMISSIONER, KOLLAM EXCISE DIVISION.

EXHIBIT P2: COPY OF COMPLAINT DATED 10.5.2007 PREFERRED BY THE PETITIONER BEFORE THE S.I. OF POLICE, KADAKKAL POLICE STATION.

RESPODNENTS' EXHIBITS:

EXHIBIT R11(a): COPY OF MASS REPRESENTATION PREFERRED BY THE 11TH RESPONDENT BEFORE THE EXCISE OFFICIALS.

EXHIBIT R11(b): COPY OF REPRESENTATION FILED BY THE 12TH RESPONDENT.

EXHIBIT R11(c): COPY OF REPORT PUBLISHED IN MATHRUBHOOMI DAILY DATED 10.5.07.

EXHIBIT R11(d): COPY OF REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DATED 15.5.07.

EXHBIT R11(e): COPY OF REPORT PUBLISHED IN MADHYAAM DAILY DATED 15.5.07.

/TRUE COPY/

PA TO JUDGE

P.R. RAMAN & K. HEMA, JJ.

W.P.(C).No.15544 of 2007

Dated this the 7th day of June, 2007.

JUDGMENT

Raman, J.

The petitioner is a licensee under the Kerala Abkari Shops Disposal Rules to vend toddy for the year 2007-08. The licence is issued to toddy shop No. 22 at Anappara. Exhibit P1 license issued to the petitioner also contains a schedule with description of the boundary, shop number, name and the range where it is situated. It is the case of the petitioner that, inspite of the fact that he has paid all dues and obtained licence in accordance with law, he is prevented from running the shop because of the obstruction caused by respondents 5 to 9 and their men.

2. Notice was issued by Special Messenger to respondents 1 to 4 and 6 to 10 and service is also completed by affixture on respondent No.5. However, respondents 7 to 9 refused to accept notice stating that the address is wrong. While so, I.ANo.7082 of 2007 was filed by Velloorela Human Rights Paura Samithy and another seeking themselves to implead in the writ petition which was

also allowed by this Court by a separate order. Simultaneously, they have also filed a counter-affidavit, inter alia, contending that Velloorela area is surrounded by schools, mosques, churches etc. It is also alleged that there is a paddy field within the IHDP Colony mainly intended for the members of the Scheduled Castes and Scheduled Tribe communities and the additional 12th respondent is the resident of the colony. People, mainly students and teachers, who go through Velloorela area use small bunds around the paddy field as their only access to the area. It is also alleged that the church is situated within a prohibited distance from the proposed toddy shop. Exhibit R11(a) is stated to be a petition submitted before the District Collector, Quilon. It is their case that the District Collector has not passed any orders on Ext.R11(a). According to them, petitioner does not have a licence to run a shop at Velloorela and further the licence issued as per Ext.P1 is a shop to be situated in Aanappara, 2 kms, away from Velloorela.
The Government Pleader, on instructions, submitted that petitioner is a duly licensed toddy shop vendor.

3. We have heard the parties. So long as the petitioner is having a valid license to run a toddy shop in the premises described in the schedule to the licenses so issued, and so long as he wants to conduct the business in the said premises strictly in accordance with

the conditions of license so issued, and so longs as the said license is not cancelled by any competent authority and in the absence of any prohibitory orders by any of the statutory authority or by a court of law, there cannot be any physical obstruction caused to the conduct of the business. However, this will not stand in the way of any peaceful agitation by the public. Hence, in case there is any physical obstruction caused, subject to the conditions as aforesaid, necessarily police will have to give necessary protection and to remove such illegal obstruction and we direct the respondent authorities to give necessary protection and to remove such physical obstruction if any caused. This will not stand in the way of any of the statutory authorities passing any appropriate orders in case it is found in the petition submitted by any of the respondents that the said shop is functioning in an area as prohibited by law.

With the above observation, writ petition is disposed of.

Sd/-

P.R.RAMAN, JUDGE.

Sd/-

K. HEMA, JUDGE.

Krs.